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RECORD OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1924

No. 343

DEERE, MEYER & COMPANY, LIMITED, APPELLANT,

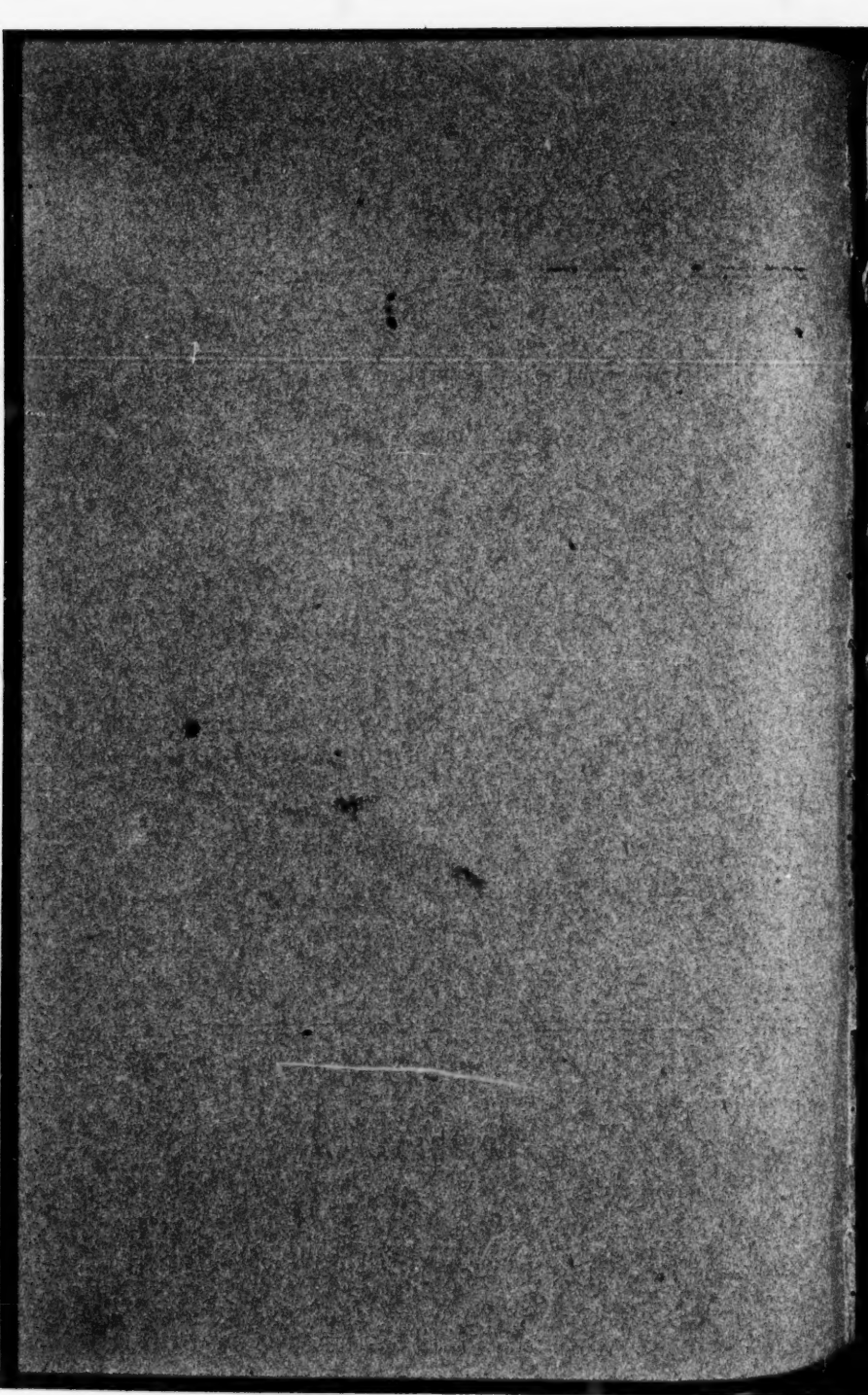
THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN
OF THE UNITED STATES, AND FRANK WHITE, AS
TREASURER OF THE UNITED STATES

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA

FILED MARCH 2, 1925

(20,331)

Wm. M.
William C. Miller 7



(30,231)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 921

BEHN, MEYER & COMPANY, LIMITED, APPELLANT,

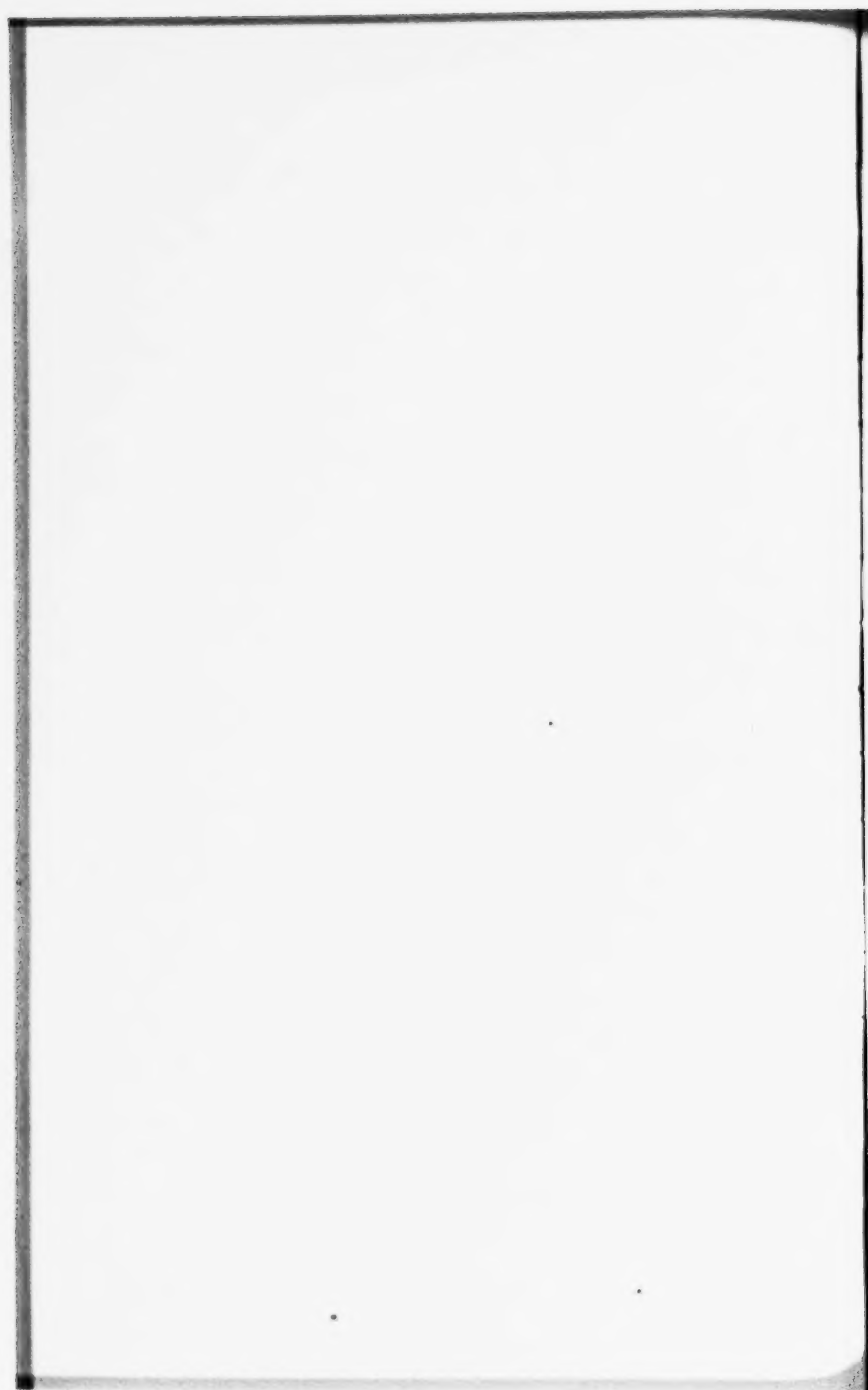
vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN
OF THE UNITED STATES, AND FRANK WHITE, AS
TREASURER OF THE UNITED STATES

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA

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[fol. 1] **COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA**

[Title omitted]

SUPREME COURT OF THE DISTRICT OF COLUMBIA

BEHN, MEYER & COMPANY, LIMITED, Plaintiff,

vs.

THOMAS W. MILLER, as Alien Property Custodian of the United States, and Frank White, as Treasurer of the United States, Defendants.

[Caption omitted]

[Title omitted]

BILL OF COMPLAINT—Filed July 28, 1922

To the Supreme Court of the District of Columbia:

The plaintiff, Behn, Meyer & Company, Limited, respectfully represents that:

[fol. 2] I. Since December, 1905, the plaintiff has been and at all times hereinafter mentioned was a corporation incorporated and organized in and existing under the laws of the Straits Settlements, a crown colony of the United Kingdom of Great Britain and Ireland.

II. The defendant Thomas W. Miller is a resident of the District of Columbia and is now and since in or about March, 1921, has been the duly appointed, qualified and acting Alien Property Custodian of the United States and is sued herein as the incumbent of said office. The said defendant is the successor in said office of one Francis P. Garvan, who in turn was the successor in said office of one A. Mitchell Palmer, the first incumbent of said office, and said defendant as such officer is possessed of the rights, property and interest owned or held by, and subject to the obligations, duties and liabilities imposed upon, his said predecessors in said office.

III. The defendant Frank White is a resident of the District of Columbia and is now and since in or about April, 1921, has been the duly appointed, qualified and acting Treasurer of the United States and is sued herein as the incumbent of said office.

IV. This is a suit of a civil nature brought under the laws of the United States, namely, the act of Congress known as the Trading with the Enemy Act, approved by the President October 6, 1917, and the acts amendatory thereto, and the executive orders and actions proclaimed and done in alleged conformity therewith, and also under and in conformity with the general jurisdiction and powers of this Court; and at the date of the commencement thereof eighteen months

had not elapsed after the "end of the war" as prescribed and defined in said acts of Congress.

V. The plaintiff is not now and never has been an "enemy" or "ally of enemy" as defined in said acts of Congress, and it has never been proclaimed by the President as included within said terms or either of them. It is not and never has been resident within, or incorporated within, or done business within any part of the territory (including that occupied by the military and naval forces) of any nation with which the United States is or at any time since April 6, 1917, was at war. It is not and never has been resident within, or incorporated within, or done business within any part of the territory (including that occupied by the military and naval forces) of any nation which now is or at any time since April 6, 1917, was an ally of any nation with which the United States now is or at any time since said date was at war.

VI. Heretofore and prior to February, 1918, the plaintiff had branches of, and was engaged in, business in the Straits Settlements, in British North Borneo, in Java, in Sumatra, in Siam, in India and in four places in the Philippine Islands, namely: Manila, Cebu, Ilo-Ilo and Zamboanga. At said branches in the Philippine Islands it then carried on a general trading and merchandising business which was under the supervision, management and control of one J. M. Menzi, a citizen of the Swiss Republic and a stockholder in the plaintiff corporation.

[fol. 3] VII. The plaintiff's business and branches in the Philippine Islands were in February, 1918, and for a considerable period prior thereto had been valuable and profitable going concerns. In said month of February, 1918, the then Alien Property Custodian of the United States, one of the predecessors of the defendant Miller herein, purporting to act under and by virtue of said act of Congress known as the Trading with the Enemy Act, caused to be seized, conveyed, transferred, assigned, delivered and paid over to him by said Menzi all the moneys, property and assets of said branches of the plaintiff's business in the Philippine Islands, and by agents and representatives said Alien Property Custodian took over and possessed himself of the same. Thereafter he, his agents and representatives, again purporting to act under the authority of said act of Congress, liquidated the said branches, caused the accounts thereof to be sold or collected and caused the property and assets thereof to be sold or otherwise disposed of, and took over the proceeds or avails thereof thus realized upon such liquidation. The exact amount so received and taken over as aforesaid by the Alien Property Custodian is unknown to the plaintiff, but it has been informed and believes that it exceeds half a million dollars. The said moneys are now in the possession, custody and control of the defendants herein, who are wrongfully withholding the same from the plaintiff and are and have been receiving the income therefrom.

VIII. The plaintiff charges that said taking over and seizure of its said property and assets of and at its said branches in the Philip-

pine Islands by, and the said conveyance, transfer, assignment, delivery and payment thereof to, the Alien Property Custodian, were illegal, wrongful and void in that the plaintiff was not an "enemy" or "ally of enemy" whose property or assets could be lawfully taken over or seized by, or conveyed, transferred, assigned, delivered or paid to, the Alien Property Custodian, within the true meaning and intent of said terms in said acts of Congress; that, on the contrary, it was a corporation incorporated within the Straits Settlements (which is territory of a nation associated with the United States in the prosecution of the recent war), and was not resident within or doing business within the territory of any nation with which the United States was at war or of any ally of such nation; that said assets and property so taken over, seized, conveyed, transferred, assigned, delivered and paid as aforesaid were owned at the time of such taking, seizure, conveyance, transfer, assignment, delivery and payment by a subject of a nation other than Germany, Austria, Hungary or Austria-Hungary, namely, by the plaintiff, a subject of the British Empire, the minority of whose capital stock was not owned, held or possessed by any citizen, subject, or resident of any enemy nation or of any ally thereof; that no due and legal determination was ever made under said Trading with the Enemy Act that the plaintiff was an enemy or ally of enemy, or that said property and assets were enemy property and assets, and that no due and lawful demand for said property and assets, as required by law, was ever made or served upon the plaintiff.

[fol. 4] IX. Heretofore and subsequent to said seizure, taking over, conveyance, transfer, assignment, delivery and payment as aforesaid of said property and assets by the Alien Property Custodian, the plaintiff, as required by section 9 of said Trading with the Enemy Act, duly filed with the Alien Property Custodian a sworn notice of its claim to said property and assets and to the proceeds and avails thereof realized by the Alien Property Custodian upon the liquidation as aforesaid of the plaintiff's Philippine branches.

X. The Straits Settlements hereinabove referred to are a part of the British Empire and territory of the United Kingdom of Great Britain and Ireland, which is a nation associated with the United States in the prosecution of the recent war, and said nation in like cases to this extends reciprocal rights to citizens of the United States.

Wherefore the plaintiff prays that a writ of subpoena issue herein directed to the said defendants, Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States, commanding them and each of them to appear herein and answer this bill of complaint, but not under oath, the answer under oath of each of them being hereby specifically waived, and that said defendants and each of them be directed (1) to deliver to plaintiff all of said property and assets seized, taken over, conveyed, transferred, assigned, delivered or paid to the then Alien Property Custodian or the defendant Alien Property Custodian or the defendant Treasurer of the United States, as aforesaid, and now in the possession, custody or

control of the above named defendants or either of them; (2) to pay over to the plaintiff the proceeds and avails of the sale or other disposition of any or all of said property and assets, together with all interest or income accrued or realized thereon; and (3) to account to the plaintiff for said property and assets, interest and income, and (4) that the plaintiff have such other and further relief as to the Court may seem just and proper.

Behn, Meyer & Company, Limited, Plaintiff, by Emil W. Martens, Attorney-in-fact. Howe, Swayze & Bradley, Solicitors for Plaintiff, Riggs Building, 1426 G Street, Washington, D. C. Walter Bruce Howe, of Counsel for Plaintiff.

Jurat showing the foregoing was duly sworn to by Emil W. Martens omitted in printing.

[fol. 5] IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION TO DISMISS—Filed September 15, 1922

* * * * *

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, by their attorney, Peyton Gordon, Esquire, Attorney of the United States in and for the District of Columbia, separately and severally moving to dismiss the bill of complaint and as grounds for their separate and several motions the following:

(1) It appears affirmatively from the allegations of the bill of complaint that the plaintiff is a corporation incorporated within a country other than the United States, and was not entirely owned by subjects or citizens of nations, states or free cities other than Germany, or Austria, or Hungary, or Austria-Hungary, at the time the money and other property sought to be recovered in this suit was required to be conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or at the time when it was voluntarily delivered to him or was seized by him and is not now so owned.

(2) It does not appear from the allegations of the bill of complaint that the plaintiff herein is a corporation incorporated within a country other than the United States and entirely owned by subjects or citizens of nations, states or free cities other than Germany, Austria or Hungary or Austria-Hungary, at the time the money and other property sought to be recovered was required to be conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him, or seized by him, and is now so owned.

(3) That the plaintiff has not stated facts sufficient to entitle it to equitable relief under Section 9 of the Trading with the Enemy Act, as amended.

Peyton Gordon, Attorney of the United States in and for the District of Columbia, Attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

MEMORANDUM OPINION OF COURT—Filed March 2, 1923

* * * * *

The plaintiff is a corporation incorporated, organized and existing under the laws of the Straits Settlements, a crown colony of Great Britain, and in February, 1918, it was engaged in business in, among other places, the Philippine Islands. In that month its assets and property situated or located there were seized by the Alien Property Custodian, and to recover them or the money derived from their sale by the defendant, and for an accounting, this suit is brought.

The motion to dismiss is primarily based upon the contention that it does not appear by the bill of complaint that the plaintiff corporation "was entirely owned * * * by subjects or citizens of nations * * * other than Germany * * * and is so owned at the time of the return of its money or other property", as provided in paragraph 6 of sub-section b of Section 9 of the "Trading with the Enemy" Act of Congress as amended by the Act approved June 5, 1920.

The allegations of the bill of complaint in this connection are that the plaintiff is a subject of the British Empire, the *minority* of whose capital stock was *not* owned, held or possessed by any citizen, subject or resident of any enemy nation or of any ally thereof, and this was its status at the time of the seizure of its property by the defendant custodian.

The fair presumption from this allegation is that the majority of its stock *was* owned by citizens, subjects or residents of an enemy nation or an ally thereof. And indeed the motion to dismiss was argued, pro and con, upon the assumption that this was the case.

The crux of the controversy lies in this: The defendants insist that the plaintiff cannot recover unless it brings itself within the provisions of paragraph 6 of sub-section b of Section 9 of the Trading with the Enemy act, as amended, while the plaintiff contends that its right to bring and maintain this suit is conferred by sub-section a of said Section 9, which permits "any person not an enemy or ally of enemy" to assert such a claim as is made in this case, in this Court.

Sub-section b, with other sub-sections, was added by the amendment of June 5, 1920, which enacts "that section 9 of an act entitled 'An Act to define, regulate, and punish trading with the enemy, and for other purposes', approved October 6, 1917, as amended, be, and hereby is, amended *so as to read as follows:* (Italics Supplied.)

Without undertaking to state the reasons for the conclusion reached, the Court is of the opinion, that the Congress intended by this amendment, to deny to foreign corporations wheresoever incorporated and organized *outside* the United States, which were not *entirely* owned by persons not subjects or citizens of Germany or Austria or Austria-Hungary, the relief afforded by the Act.

[fol. 7] This being so, the motion to dismiss the bill of complaint must prevail.

March 2, 1923.

F. L. Siddons, Justice.

6
IN SUPREME COURT OF DISTRICT OF COLUMBIA

STIPULATION—Filed March 23, 1923

* * * * *

It is hereby stipulated and agreed by and between Messrs. Howe, Swayze & Bradley, attorneys for the plaintiff, and Peyton Gordon, Esquire, Attorney of the United States in and for the District of Columbia, attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, that at the hearing upon the motion to dismiss the bill of complaint in this cause, counsel for the plaintiff amended the bill of complaint by inserting in paragraph numbered VIII thereof, before the words "the minority," the word "only," so that the said paragraph of the bill of complaint read as follows:

"The plaintiff charges that said taking over and seizure of its said property and assets of and at its said branches in the Philippine Islands by, and the said conveyance, transfer, assignment, delivery and payment thereof to, the Alien Property Custodian, were illegal, wrongful and void in that the plaintiff was not an 'enemy' or 'ally of enemy' whose property or assets could be lawfully taken over or seized by, or conveyed, transferred, assigned, delivered or paid to, the Alien Property Custodian, within the true meaning and intent of said terms in said acts of Congress; that, on the contrary, it was a corporation incorporated within the Straits Settlements (which is territory of a nation associated with the United States in the prosecution of the recent war), and was not resident within or doing business within the territory of any nation with which the United States was at war or of any ally of such nation; that said assets and property so taken over, seized, conveyed, transferred, assigned, delivered and paid as aforesaid were owned at the time of such taking, seizure, conveyance, transfer, assignment, delivery and payment by a subject of a nation other than Germany, Austria, Hungary or Austria-Hungary, namely, by the plaintiff, a subject of the British Empire, only the minority of whose capital stock was not owned, held or possessed by any citizen, subject or resident of any enemy nation or of any ally thereof; that no due and legal determination was ever made under said Trading with the Enemy Act that the plaintiff was an enemy or ally of enemy, or that said property and assets were enemy property and assets, and that no due and lawful demand for said property and assets, as required by law, was ever made or served upon the plaintiff."

Howe, Swayze & Bradley, Attorneys for Plaintiff. Peyton Gordon, Attorney of the United States in and for the District of Columbia, Attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

FINAL DECREE—Filed March 23, 1923

* * * * *

Upon consideration of the amended bill of complaint filed herein and the motion to dismiss the same filed on behalf of the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, after argument of counsel for all the parties, and the Court having taken time to consider and the plaintiff electing to stand upon its amended bill of complaint,

It is by the court, this 23rd day of March, 1923, adjudged, ordered and decreed that the amended bill of complaint be and the same hereby is dismissed.

F. L. Siddons, Justice Supreme Court of the District of Columbia.

NOTATION OF APPEAL

From the foregoing decree Behn, Meyer & Company, Ltd., plaintiff in this cause, in open court notes an appeal to the Court of Appeals of the District of Columbia, and the amount of the bond for costs is fixed at \$100.

F. L. Siddons, Justice.

We consent to the above as to form.

Howe, Swayze & Bradley, Attorneys for Plaintiff.

[fol. 9]

MEMORANDUM

April 4, 1923.—Bond on appeal approved and filed.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ASSIGNMENT OF ERRORS—Filed April 11, 1923

* * * * *

Comes now the plaintiff, Behn, Meyer & Company, Limited, and by its attorneys of record, Howe, Swayze & Bradley and upon its appeal to the Court of Appeals states that the Supreme Court of the District of Columbia erred as follows:

1. In sustaining defendants' Motion to Dismiss and
2. In dismissing the amended Bill of Complaint.

Howe, Swayze & Bradley, Attorneys for Plaintiff.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

DESIGNATION OF RECORD—Filed April 11, 1923

* * * * *

The undersigned, attorneys of record respectively for the plaintiff and defendants, having agreed that the following parts of the record in the above entitled cause be included in the Transcript of Record on Appeal, hereby request the Clerk of the Court to include the following in said Transcript:

1. Bill of Complaint.
2. Defendants' Motion to Dismiss the Bill of Complaint.
3. Stipulation by the respective attorneys for the plaintiff and defendants as to amendment of the Bill of Complaint.
4. Opinion of Court sustaining defendants' Motion to Dismiss the Bill of Complaint.
5. Final Decree of the Court dismissing amended Bill of Complaint.
6. Memorandum: Appeal taken in open Court.
7. Memorandum: Appeal bond filed and approved.
8. Assignment of Error.
9. This Designation.

Howe, Swayze & Bradley, Attorneys for Plaintiff and Appellant. Vernon E. West, Ass't United States Attorney, Attorney for Defendants and Appellees.

[fol. 10] SUPREME COURT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

District of Columbia, ss:

CLERK'S CERTIFICATE

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 14, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 40361 in Equity, wherein Behn, Meyer & Company, Limited, is Plaintiff and Thomas W. Miller, as Alien Property Custodian of the United States, et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of June, 1923.

Morgan H. Beach, Clerk. (Seal Supreme Court of the District of Columbia.) E. W.

[File endorsement omitted.]

Monday, February 11th, A. D. 1924.

* * * * *

No. 4014

BEHN, MEYER & COMPANY, LIMITED, Appellant,

vs.

THOMAS W. MILLER, as Alien Property Custodian of the United States, and FRANK WHITE, as Treasurer of the United States

ARGUMENT

The argument in the above entitled cause was commenced by Mr. William D. Guthrie, attorney for the Appellant, and was continued by Mr. Dean H. Stanley, attorney for the Appellees, and was concluded by Mr. William D. Guthrie, attorney for the Appellant.

[fol. 12] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

Before Smyth, Chief Justice; Robb and Van Orsdel, Associate Justices

OPINION

Mr. Justice VAN ORSDEL delivered the Opinion of the Court:

VAN ORSDEL, Associate Justice: This case is here on appeal from a decree entered in the Supreme Court of the District of Columbia, dismissing an amended bill of complaint filed by Behn, Meyer & Co., Ltd., plaintiff corporation, against the Alien Property Custodian and the Treasurer of the United States, to recover certain assets of the plaintiff, seized by the Alien Property Custodian, or the money derived from their sale and for an accounting.

It is averred in the bill of complaint that the plaintiff corporation was engaged in business in the Philippine Islands in February, 1918, when its assets were seized by the Alien Property Custodian; that it was "a subject of the British Empire, the minority of whose capital stock was not owned, held or possessed by any citizen, subject or resident of any enemy nation or of any ally thereof." From this averment it appears that the majority of the stock was enemy-owned. Indeed, it was conceded in argument that the majority of the stock was owned by German citizens.

The case arises under section 9 of the "Trading with The Enemy Act" approved October 6, 1917 (40 Stats. 411), as amended March 4, 1923 (42 Stats. 1511). Sub-section (a) of section 9, of the

amended Act is substantially a re-enactment of section 9 of the original Act. It provides for recovery by "any person not an enemy or ally of enemy claiming any interest, right, or title in any money [fol. 13] or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States."

Plaintiff contends that its case comes within the provisions of sub-section (a) of section 9. This position cannot be sustained, since, while plaintiff is in its corporate entity non-enemy, a portion of its stock is enemy-owned, and this is sufficient to prevent it from recovery in its corporate capacity under sub-section (a). The case, we think, falls within the provisions of paragraph 11, of sub-section (b), section 9, which, among other things, accords the right of recovery to "a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, more than 50 per centum of interests or voting power in, any such * * * corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, states, or free cities" other than the enemy countries named. The Act, in addition, broadly includes partnerships, associations, unincorporated bodies of individuals having their principal place of business within non-enemy countries.

By this amendment, it was clearly the intent of Congress to liberalize and enlarge the right of recovery. A number of the amendments to section 9 of the original Act were made by an Act of Congress approved June 5, 1920, 41 Stats. 977, in which the purpose of the amendment is expressed in the report of the committee on Interstate and Foreign Commerce of the House of Representatives (66th Congress, 2nd Session, Rep. No. 1089), as follows: "The purpose of the above Bill is to amend section 9 of the Trading with The Enemy Act so as to facilitate the return on the part of the Alien Property Custodian of money or other property conveyed, transferred, assigned, delivered, or paid to him or seized by him, under the provisions of the above Act. * * * In view of the fact that 19 months have elapsed since the signing of the Armistice and during this period an actual state of peace has existed, there [fol. 14] have been increasing demands for legislation asking for a return of property now being held by the Alien Property Custodian." The 1923 amendment is a further enlargement of the rights of claimants.

Plaintiff corporation, as stated in the brief of counsel, "insists that the fact that a majority of its stock was enemy-owned is immaterial. That fact would have given the Alien Property Custodian the right to take the stock or beneficial interest of its enemy stockholders; but it did not confer upon him the right to seize and sell or liquidate the plaintiff's business, to the detriment, not only of its German stockholders, but of its neutral and friendly stockholders as well."

We think paragraph 11, of sub-section (b), provides exactly the converse of the above proposition. It clearly forbids recovery by a corporation organized in a non-enemy country, except where more than 50 per cent of the stock is owned "by subjects or citizens of nations, states, or free cities" other than the enemy countries named therein. By this we are convinced that Congress intended to preclude a non-enemy corporation from recovering in its corporate capacity where the majority of the stock was owned by citizens of enemy countries. The way, however, was still left open for non-enemy stockholders, owning stock in such a corporation, to come in and recover their stock or the value thereof.

We think it clear, therefore, that plaintiff corporation, with more than 50 per cent of its stock owned by German citizens, is not entitled to recover.

The decree is, therefore, affirmed with costs.

[fol. 15] IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

DECREE—Monday March 3rd, A. D. 1924

[Title omitted]

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. Justice Van Orsdel, March 3, 1924.

[fol. 16] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR ALLOWANCE OF APPEAL—Filed March 7, 1924

To the Supreme Court of the United States:

Now comes Behn, Meyer & Company, Limited, the appellant in the above entitled cause by its attorneys and moves the Court for the allowance of an appeal to the Supreme Court of the United States to review the decree of this Court herein, and respectfully shows as follows:

1. The above entitled cause grows out of a Bill in Equity filed in the Supreme Court of the District of Columbia, and an appeal from a decree of that Court dismissing the bill on motion of the appellees.

The cause arose under the Act of Congress known as The Trading with the Enemy Act approved October 6, 1917, as amended, and involves (1) the construction of this law of the United States, (2) the constitutionality of certain portions thereof, if construed as held by this Court and the Court below, (3) the validity of the authority exercised by appellees, or either of them, under the United States in [fol. 17] seizing and withholding appellant's property or its proceeds and (4) the existence and scope of the power and duty of the Alien Property Custodian, and the Treasurer of the United States, the appellees herein, to withhold from appellant its said property or the proceeds thereof.

2. Appellant contended that under said Act of Congress, as amended, it was entitled to the return of its property or the proceeds thereof in the hands of the Alien Property Custodian or the Treasurer of the United States. Appellees denied the correctness of this contention. The Court sustained the appellees by its decree filed March 3rd, 1924.

3. The decree of this Court was final. The appellant is entitled to appeal to the Supreme Court of the United States under Section 250 of the Act of Congress entitled "An Act to Codify, Revise and Amend the Laws relating to the Judiciary" approved March 3, 1911, and more particularly under paragraphs Third, Fifth and Sixth of said Section. Under said paragraphs the right is given to appeal to the Supreme Court of the United States (1) in cases involving the application of the Constitution of the United States or the constitutionality of any law of the United States, (2) in cases in which the validity of any authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States is drawn in question, and (3) in cases in which the construction of any law of the United States is drawn in question.

[fol. 18] 4. Appellant requests that the bond required for the appeal be fixed at Three Hundred (\$300.00) Dollars to act as supersedeas.

(Signed) Howe, Swayze & Bradley, Attorneys for Appellant.

Dated: Washington, D. C., March 7th, 1924.

Service of the above motion is hereby acknowledged this 7th day of March, 1924.

(Signed) Dean Hill Stanley, Attorney for Appellees.

[fol. 19] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed March 7, 1924

The Court of Appeals of the District of Columbia having entered a decree against Behn, Meyer & Company, Limited, the appellant

in the above entitled cause, and the appellant having filed a motion for the allowance of an appeal to the Supreme Court of the United States, the appellant presents this its assignments of error, and avers as follows:

1. The Court erred in affirming the judgment, order and decree of the Supreme Court of the District of Columbia herein.

2. The Court erred in its construction of the Act of Congress known as The Trading With The Enemy Act, approved October 6th, 1917, as amended, and in denying to appellant the return of its property, or the proceeds thereof described in its bill of complaint.

3. The Court erred in holding that paragraph 6 of sub-section b of Section 9 of said Act of Congress prevented appellant from recovering the property, or the proceeds thereof, described in its bill of complaint.

[fol. 20] 4. The Court erred in holding that sub-section a of Section 9 of said Act of Congress, as amended, did not entitle appellant to recover the property, or the proceeds thereof, described in its bill of complaint.

5. The Court erred in holding that said Act of Congress, as amended, authorized the retention by the Alien Property Custodian or the Treasurer of the United States, the appellees herein, of the property of appellant, or the proceeds thereof, described in its bill of complaint.

6. The Court erred in holding that, under the Fifth Amendment to the Constitution of the United States, the Alien Property Custodian or the Treasurer of the United States, the appellees herein, could, by virtue of said Act of Congress, as amended, lawfully withhold and retain from appellant, a neutral corporation and not an enemy as defined in said Act, as amended, the property belonging to it or the proceeds thereof, which is described in its bill of complaint.

7. The Court erred in holding that the property belonging to appellant, which is described in its bill of complaint, was lawfully seized by the Alien Property Custodian.

8. The Court erred in holding that, under subsection a of Section 9 of the said Act of Congress, as amended, appellant, although a non-enemy, could not recover its property, or the proceeds thereof, described in its bill of complaint, from the appellees, because a portion of the stock of the appellant corporation was enemy owned.

[fol. 21] 9. The Court erred in construing paragraph 11 of sub-section b of Section 9 of said Act of Congress, as amended, as preventing appellant from recovering the property, or the proceeds

thereof, described in its bill of complaint, or as warranting the appellees, or either of them, in withholding the same from appellant.

Respectfully submitted, (Signed) Howe, Swayze & Bradley,
Attorneys for Appellant.

Dated: Washington, D. C., March 7th, 1924.

[fol. 22] [File endorsement omitted.]

[fol. 23] IN COURT OF APPEALS OF DISTRICT OF COLUMBIA.

[Title omitted]

ORDER ALLOWING APPEAL—Saturday, March 8th, A. D. 1924

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is ordered by the Court that said appeal be and the same is hereby allowed, and the bond to act as supersedeas is fixed at the sum of three hundred dollars.

[fols. 24 & 25] BOND ON APPEAL FOR \$300—Approved and filed March 26, 1924; omitted in printing

[fol. 26] CITATION IN USUAL FORM SHOWING SERVICE ON PEYTON GORDON—Filed March 27, 1924; omitted in printing

[fol. 27] [File endorsement omitted.]

[fol. 28] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD ON APPEAL—Filed March 27, 1924

The Clerk in the preparation of the Transcript of Record on Appeal to the Supreme Court of the United States in the above entitled cause will please include the following namely:

- (1) Transcript of Printed Record in this Court.
- (2) Minute entry as to argument.
- (3) Opinion of this Court.

- (4) Decree of this Court.
- (5) Motion for appeal to the Supreme Court of the United States and Assignments of Error.
- (6) Order granting Appeal and Fixing Amount of Bond.
- (7) Bond with approval noted.
- (8) Citation with Proof of Service.
- (9) This Designation.

Howe, Swayze & Bradley, Attorneys for Appellant.

Dated March 27th, 1924.

Service acknowledged March 27th, 1924.

(Signed) Dean Hill Stanley, Attorney for Appellees.
[fol. 29]

[fol. 30] COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 29, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Behn, Meyer & Company, Limited, Appellant, vs. Thomas W. Miller, as Alien Property Custodian of the United States, and Frank White as Treasurer of the United States. No. 4014, January Term, 1924, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 27th day of March, A. D. 1924.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal of the Court of Appeals, District of Columbia.)

File No. 30,231. District of Columbia, Court of Appeals. Term No. 921. Behn, Meyer & Company, Limited, Appellant, vs. Thomas W. Miller, as Alien Property Custodian of the United States, and Frank White, as Treasurer of the United States. Filed March 28th, 1924. File No. 30,231.